

HUMAN SERVICES BOARD

In re) Fair Hearing No. S-10/09-551
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 Appeal of)

The petitioner appeals the decision by the Department for Children and Families, Economic Services Division, Health Access Eligibility Unit (HEAU) requiring her to obtain employer-sponsored insurance (VHAP-ESIA) in order to remain eligible for VHAP, even though this will result in a reduction in her work hours through her employer. The issue is whether insurance can be considered "available" to the petitioner through her employer. The following facts are not in dispute.

1. The petitioner, who is currently receiving "regular" VHAP,¹ reapplied for health benefits in September 2009. In a decision dated September 10, 2009 the Department determined that the petitioner could remain eligible for VHAP only if she enrolled in her employer's insurance plan, and received

¹The petitioner's VHAP benefits have been continued pending this fair hearing.

assistance from the Department in paying her premium for that insurance (VHAP-ESIA).

2. The petitioner works for a non-profit company and her position at the company is "budgeted" for a set amount each year. The budgeted amount for her position includes her income and health benefits.

3. If the petitioner could continue to receive "regular" VHAP through the Department, and not go onto her employer's insurance, her employer's budget for her position would allow her to work 30 hours a week, which she is now doing. However, if the petitioner is required to enroll in her employer's insurance plan, her employer will have to pay a portion of her VHAP-ESIA premium, leaving room for the petitioner to work only 25 hours per week to remain within the employer's budget for her position.

4. The petitioner does not dispute that it would be more cost effective *for the Department* for her to enroll in her employer's insurance plan, regardless of the number of hours she works for her employer.

5. The Department maintains that its regulations regarding eligibility for its health programs are not flexible enough to account for individual vagaries in the terms of recipients' employment, and that the petitioner

cannot be found eligible for VHAP if she can enroll in her employer's plan, even though it will result in a deduction in her employment hours and her income if she cannot replace these hours through other employment.

ORDER

The Department's decision is affirmed.

REASONS

As a general matter, an income-eligible adult can be enrolled in VHAP only if she is "uninsured", which the regulations define as an individual who has "no private insurance or employer-sponsored coverage". W.A.M. § 5312B. Section 5911 provides for VHAP-ESIA coverage for VHAP-income-eligible adults "who have access to an approved ESI plan". Section 5911.1 provides: "Enrollment in an ESI plan with VHAP-ESIA is a condition for eligibility for VHAP if the plan is approved and available, and enrollment is determined to be cost-effective. . . ." Under § 5901, an "available ESI plan is defined only as "an ESI plan that the employee may enroll in within ninety days". It is clear from the underlying statutes that "cost effective" means whichever plan will cost *the Department* less in the expenditure of benefits. See 33 V.S.A. § 1974.

In this case, the Department has determined that the petitioner must enroll in her employer's insurance plan, with premium assistance, rather than be enrolled in "regular" VHAP, even if this means that the petitioner will suffer a five-hour-per-week reduction in her hours with this particular employer. While this situation is regrettable, it must be concluded that nothing in the VHAP statutes or regulations can reasonably be interpreted as an intent to maximize the income or employment potential of individual recipients. Although it may be a dubious proposition in this economy, the petitioner is free, at least theoretically, to obtain other employment to replace her lost hours and wages, without jeopardizing her eligibility for VHAP-ESIA through this employer (provided that her *total* income would remain under the VHAP maximum).

Inasmuch as the Department's decision in this matter is in accord with the pertinent regulations, the Board is bound by law to affirm. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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